

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-15**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to agreement to provide hotel rooms.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER(S)] manage and operate hotels throughout the United States including several locations within Tennessee.

The Taxpayer entered into an agreement with [COMPANY A] for the provision of hotel rooms to [COMPANY A's EMPLOYEES]. Under the terms and conditions of the agreement, the Taxpayer and [COMPANY A] mutually agree and consent that the Taxpayer will reserve "a maximum of [NUMBER] rooms nightly" at one of the Taxpayer's Tennessee locations, and that "it is understood that the number of rooms will vary from month to month." There is no minimum number of rooms guaranteed to be occupied by [COMPANY A] under the agreement.

The agreement further provides that tax will not be charged on rooms occupied for 90 or more consecutive days including the initial 90 days of the one year term of the agreement. Moreover, the agreement provides that where required under the law for purposes of establishing continuous occupancy, the Taxpayer agrees to block and assign the same rooms over the term of the agreement.

The terms and conditions of the agreement also permit additional rooms over and above the [NUMBER] room threshold to be furnished as needed on a daily basis subject to availability, as provided for in Attachment 1 of the agreement. The Taxpayer does not bill [COMPANY A] for reserved rooms where there is an advance notice of cancellations given to the Taxpayer by [COMPANY A EMPLOYEES]. The Taxpayer invoices [COMPANY A] on a thirty day cycle for the rooms furnished under the agreement.

ISSUES

1. Whether the charges made for rooms reserved under the agreement, up to the [NUMBER] room maximum, are subject to sales and use tax.
2. Whether the charges made for rooms reserved under the agreement, up to the [NUMBER] room maximum, are subject to lodging or accommodations tax imposed at the county or municipal level.

RULINGS

1. The charges made for rooms reserved under the agreement are subject to the sales tax during the first ninety days of occupancy. After ninety days of continuous occupancy, taking into account any cancellations, [COMPANY A] should be given credit or a refund and the Taxpayer may file a claim for refund or take a credit for taxes paid to the Department.
2. The Department does not administer the lodging or accommodations tax imposed at the county or municipal level and accordingly cannot render an opinion as the applicability of the tax.

ANALYSIS

1. Tenn. Code Ann. § 67-6-102(23)(F)(i) defines a retail sale to include

The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more.

“Person” is defined to include “any individual, firm, co-partnership, joint venture, association, [or] corporation, . . .” Tenn. Code Ann. § 67-6-102(20). Accordingly, the [COMPANY A] reserving the rooms is a person for purposes of Tenn. Code Ann. § 67-6-102(23)(F)(i).

TENN. COMP. R. & REGS. 1320-5-1-.70(2) provides that

[a]fter a transient has occupied a room or other accommodation for ninety (90) continuous days or more, the dealer furnishing the room or other accommodations may refund any Sales Tax which he has actually collected from the person, and claim credit for that tax on a subsequent return filed with the Department.

The nature of the agreement with the Taxpayer is that [COMPANY A] is not required to reserve the same number of rooms per night, or even a minimum number of rooms, but may cancel any of the reserved rooms at any given time during the contract period. If [COMPANY A] does cancel its reservation for a particular room, such cancellation breaks the continuous ninety day requirement, and the Taxpayer should collect tax when that room is occupied again.

Each time there is a cancellation, the chain of continuous days for that room has been broken and must start again. There will probably be a certain number of rooms that are always occupied by [COMPANY A]. After the initial ninety days, those rooms will not be subject to sales tax. Any rooms over that core number of continuously occupied rooms will be subject to tax if not continuously occupied for at least ninety days. It is not necessary that the same individual rooms be occupied for the ninety days. *Nashville Hotel Company v. Woods*, Davidson County Circuit Court No. B-17248 (June 1, 1977).

For example, if [COMPANY A] rented between 30 and 40 rooms during the first ninety days, it would only be entitled to a refund or credit for the tax paid on 30 rooms, since the other rooms were used either sporadically as the need arose or not for a continuous ninety days.

Accordingly, the Taxpayer must collect the tax during the initial 90 day period of occupancy for each room, after which time it may refund to [COMPANY A] any tax collected with respect to rooms occupied continuously by [COMPANY A] for at least ninety days. The Taxpayer may either file a claim for refund or take a credit for the refund on a subsequent tax return.

2. The Department of Revenue does not administer any municipal or county lodging or accommodations tax. Accordingly, the Department cannot render an opinion concerning the local tax. The Taxpayer should seek an opinion from the municipal or county attorney as to the applicability of the local tax to this situation.

Caroline R. Krivacka, Tax Counsel

APPROVED: _____
Ruth E. Johnson, Commissioner

DATE: 3-10-98